

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 98-171

April 14, 1999

HARVARDNET, INC.  
Petition for Certification as an  
Intrastate Toll and Local  
Exchange Carrier

ORDER GRANTING AUTHORITY TO  
PROVIDE DEDICATED LOCAL AND  
INTEREXCHANGE SERVICE AND  
APPROVING SCHEDULE OF RATES  
AND TERMS AND CONDITIONS

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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In this Order, the Commission grants HarvardNet, Inc. (HarvardNet or Company) the authority to provide competitive local and interexchange service in the form of dedicated services on a facilities and/or resale basis in the Bell Atlantic service area in the State of Maine, and approves the Company's Terms and Conditions and Rate Schedules for said services. We also exempt HarvardNet from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

**I. APPROVAL OF APPLICATION TO SERVE**

On February 28, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, HarvardNet filed a petition with the Commission requesting authority to provide local telephone service in Maine. On January 15, 1999, HarvardNet filed an Amendment to its Petition, in which it stated that it also requested authority to provide intrastate interexchange (toll) services in Maine and provided additional information in support of its Petition. The Amendment also stated that HarvardNet withdrew the proposed rate schedule accompanying its original Petition and that it would file schedules of rates, terms and condition as necessary before providing service. On March 29, 1999, HarvardNet filed financial information in support of its Petition, subject to a Protective Order which had been issued on March 11, 1999. On April 1, 1999, HarvardNet filed replacement Terms and Conditions and Rate Schedules.

Also, on April 1, 1999, HarvardNet filed an additional amendment to its Petition, limiting the scope of authority presently being requested as follows:

The Applicant requests authority to provide dedicated service on a facilities and/or resale basis. The Applicant does not seek authority to provide facilities-based switched local exchange services at this time.

In its April 1 letter, HarvardNet stated that the provision of services pursuant to this authority would not require the assignment of NXXs to HarvardNet.

35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where another utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service. 47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting HarvardNet the authority to provide dedicated (non-switched) service on a facilities and/or resale basis, for either local or interexchange traffic, will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). HarvardNet's application provides reasonable information indicating that its financial and management capabilities are adequate to provide competitive telecommunications services in Maine.

In its Amendment to Petition, HarvardNet requested authority to provide interexchange service and local exchange service in all areas of the State of Maine served by Bell Atlantic. It later amended its Petition to request authority to provide only dedicated (non-switched) services on a facilities and/or resale basis at this time. We approve its request to provide such services throughout areas of the State served by Bell Atlantic.

HarvardNet's proposed Rates, Terms and Conditions, which we approve today, also limit its service offering to such dedicated services. If HarvardNet wishes to expand the scope of its authority in the future, it shall seek such approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. HarvardNet shall simultaneously file amended Rates, Terms and Conditions pursuant to 35-A M.R.S.A. § 307, as may be necessary with regard to the requested authority. If it

requests authority to provide facilities-based switched local exchange services, the application shall include information establishing a readiness to provide facilities-based switched local service within a reasonable period of time in the specifically identified additional areas. It is not necessary for a Competitive Local Exchange Carrier (CLEC) with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on such an application and Rates, Terms and Conditions revisions.

## **II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES**

On April 1, 1999, HarvardNet filed its proposed Schedule of Rates, Terms and Conditions for the dedicated services described in its April 1 letter modifying the scope of its Petition. We allow the terms and conditions and rate schedules proposed by HarvardNet to go into effect. HarvardNet has used the Commission's expedited process, which includes standard terms and conditions that comply with the Commission's Rules.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of HarvardNet's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by HarvardNet to go into effect.

## **III. INTERCONNECTION AGREEMENT**

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for HarvardNet's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

On April \*\*\*\*, 1999 in Docket No. 99-178, the Commission approved an agreement between HarvardNet and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Maine pursuant to 47 U.S.C. § 252. As a condition of providing local exchange service, HarvardNet must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

In the event that HarvardNet subsequently seeks authority to provide local service in an area served by an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), it may need an interconnection agreement with that ILEC. All of Maine's independent telephone companies are "rural telephone companies." If a competitive local exchange carrier (CLEC) makes a bona fide request for an interconnection agreement with a rural telephone company, the "rural exemption" of 47

U.S.C. § 251(f) will apply. A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement “is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . . .”

#### **IV. PAYMENT OF ACCESS CHARGES**

Although HarvardNet may not require intrastate access services to provide services under the limited scope of authority it seeks at this time (i.e. dedicated services), our approval of the Company’s petition to provide service in Maine is conditioned on HarvardNet’s payment of any access charges, as may be applicable, as required by Chapter 280, *Provision of Competitive Telecommunications Services*, to local exchange carriers who have on file with the Commission approved access charge rate schedules.

#### **V. WAIVERS; REPORTING REQUIREMENTS**

As a condition of providing local service, HarvardNet must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. HarvardNet shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Pursuant to sections 11(A) and 12(A) of Chapter 280, HarvardNet is exempt from Chapter 210 of the Commission’s Rules, which governs telephone utility accounting and annual financial reports, with regard to its interexchange carrier activities, and from 35-A M.R.S.A. § §707 and 708, which govern approvals for reorganizations and contracts with affiliated interests. Because HarvardNet’s rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, HarvardNet must comply with any applicable requirements of the Commission for the filing of information and annual reports by CLECs, and must report its annual intrastate gross operating revenues, if available, and, if available, its annual intrastate minutes of use for the purpose of determining its regulatory assessment.<sup>1</sup> If HarvardNet resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales. In such a case, pursuant to Chapter 280, § 11(B), HarvardNet

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this

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<sup>1</sup>The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

Chapter. Those records shall be maintained for a minimum of 2 calendar years.

The exemptions from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 granted by Chapter 280, § 12(A) are subject to the notice requirements contained in Chapter 280, §§12(B) and (C) and Ordering Paragraph 3.

In addition, HarvardNet shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity.

## **VI. OTHER REQUIREMENTS**

HarvardNet shall comply with all applicable rules of the Commission and statutes of the State of Maine.

## **VII. ORDERING PARAGRAPHS**

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of HarvardNet, Inc. to provide dedicated service on a facilities and/or resale basis, for local and interexchange traffic, in all areas served by Bell Atlantic within the State of Maine;

2. Exempt HarvardNet, Inc. from the requirements of Chapter 210 of the Commission's Rules, except that it must comply with any applicable requirements of the Commission for the filing of information or annual reports by CLECs and that it must report the revenue and, if available, minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt HarvardNet, Inc. from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that HarvardNet, Inc. shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of HarvardNet, Inc. or of any entity that owns more than 50% of HarvardNet, Inc.. HarvardNet, Inc. shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. HarvardNet, Inc. shall provide the Administrative Director of the Commission with notice of any of the changes

described within 30 days following the change. If necessary, HarvardNet, Inc. shall amend its rate schedules and terms and conditions to reflect any change in identity.

4. Order that HarvardNet, Inc. shall pay any applicable access charges as required by Chapter 280 of the Commission's Rules and access rate schedules filed by local exchange carriers and approved by the Commission.

5. Order that HarvardNet, Inc. shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10, where applicable, that interexchange carriers provide notice to all affected customers of an increase to any rate for interexchange service that is greater than 20%.

6. Direct that HarvardNet's proposed terms and conditions and rate schedules filed on April 1, 1999 Original Page 1 through Original Page 6 and Original Page 7 (1st replacement), attached to this Order, shall be effective on the date of this Order.

Dated at Augusta, Maine, this 14th day of April, 1999.

BY ORDER OF THE COMMISSION

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Raymond Robichaud  
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission to the Maine Supreme Judicial Court, sitting as the Law Court, is not available, as provided in 47 U.S.C. § 252(e)(6).
3. Review of this discussion is available to an aggrieved party by bringing an action in federal district court, as provided in 47 U.S.C. § 252(e)(6).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.